



INTERIOR BOARD OF INDIAN APPEALS

Thlopthocco Tribal Town v. Acting Muskogee Area Director,
Bureau of Indian Affairs

39 IBIA 132 (09/16/2003)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

THLOPTHLOCCO TRIBAL TOWN,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 95-118-A
ACTING MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 16, 2003

Appellant Thlopthlocco Tribal Town sought review of an April 12, 1995, decision issued by the Acting Muskogee Area Director (now Eastern Oklahoma Regional Director), Bureau of Indian Affairs (Director), concerning Appellant's fiscal year 1995 proposal to contract the law enforcement program under the Indian Self-Determination Act (ISDA). The Board of Indian Appeals (Board) stayed its consideration of this matter on December 9, 1997, after learning that a related appeal had been filed in Federal court. See Thlopthlocco Tribal Town v. Babbitt, No. CIV 97-306 P (E.D. Okla. Appeal filed 1997). The District Court dismissed the case on January 31, 2002. Appellant appealed. See Thlopthlocco Tribal Town v. Norton, No. 02-7031 (10th Cir.).

By order dated July 7, 2003, the Board requested a report from the parties on the status of the Federal court litigation. In a July 16, 2003, response, the Director stated his belief that this appeal was moot because, on February 26, 2003, Appellant moved to dismiss its Federal Circuit Court appeal with prejudice. On August 18, 2003, the Board received a status report from Appellant in which Appellant requested that the Board "dismiss this appeal as moot, without prejudice for filing future claims based on similar facts and circumstances capable of repetition." Status Report at 2.

Appellant's status report was filed by an attorney who was not Appellant's counsel of record before the Board. Therefore, the Board ordered clarification of the attorney representing Appellant. On September 8, 2003, it received an entry of appearance for Appellant and substitution of counsel. Based on this substitution of counsel, the Board accepts Appellant's previously filed status report and request to dismiss.

Appellant's motion is granted as follows. The appeal as to the fiscal year 1995 proposed ISDA contract, which is the subject of this appeal, is dismissed with prejudice. This dismissal does not affect Appellant's right to appeal from any future ISDA decisions. However, if Appellant wishes to raise in future appeals before the Board the legal issues that were the basis for its Federal court appeals, it may be required to make an initial showing that the Board is not precluded from considering those issues by Appellant's actions in Federal court.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Acting Muskogee Area Director's April 12, 1995, decision is dismissed in accordance with this order.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Charles E. Breece
Principal Deputy Director
Office of Hearings and Appeals 1/

1/ Kathleen R. Supernaw, Acting Administrative Judge, has recused herself from this case.